

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

In the matter of the proposed)	NOTICE OF PUBLIC HEARING
amendment of ARM 36.12.102, forms)	ON PROPOSED AMENDMENT
and ARM 36.12.103, form and special)	
fees)	

To: All Concerned Persons

1. On January 17, 2008, at 1:00 p.m., the Department of Natural Resources and Conservation will hold a public hearing in the Fred Buck Conference Room (bottom floor), at the Department of Natural Resources and Conservation, Water Resources Building, 1424 Ninth Avenue, Helena, Montana, to consider the amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on January 2, 2007, to advise us of the nature of the accommodation that you need. Please contact Kim Overcast, Montana Department of Natural Resources and Conservation, 1424 Ninth Avenue, Helena, MT 59620, (406) 444-6614, fax (406) 444-0533.

3. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

36.12.102 FORMS (1) The following necessary forms for implementation of the act and these rules are available from the Department of Natural Resources and Conservation, P.O. Box 201601, Helena, Montana 59620-1601 and its Water Resources regional offices, or on the World Wide Web at <http://dnrc.mt.gov/wrd/default.asp>. The department may revise as necessary the following forms to improve the administration of these rules and the applicable water laws:

(a) Form No. 600, "Application for Beneficial Water Use Permit" (for groundwater developments in excess of 35 gpm or ten acre-feet per year and surface water appropriations); :

~~(i) Submission of this application must include a criteria addendum. See Form Nos. 600A or 600B.~~

(i) Form No. 600A, "Criteria Addendum, Application for Beneficial Water Use Permit," information must be submitted for appropriations of less than 4000 acre-feet and 5.5 cfs; or

(ii) Form No. 600B, "Criteria Addendum, Application for Beneficial Water Use Permit," information must be submitted for appropriations of 4000 acre-feet or more and 5.5 cfs or more.

~~(b) Form No. 600A "Criteria Addendum, Application for Beneficial Water Use Permit" (for appropriations of less than 4000 acre-feet and 5.5 cfs);~~

- ~~(c) Form No. 600B "Criteria Addendum, Application for Beneficial Water Use Permit" (for appropriations of 4000 acre-feet or more and 5.5 cfs or more);~~
- ~~(d) (b) Form No. 602, "Notice of Completion of Groundwater Development" (for groundwater developments with a maximum use of 35 gpm or less, not to exceed 10 acre-feet per year);~~
- ~~(e) (c) Form No. 603, "Well Log Report";~~
- ~~(f) (d) Form No. 605, "Application for Provisional Permit for Completed Stockwater Pit or Reservoir" (maximum capacity of the pit or reservoir must be less than 15 acre-feet);~~
- ~~(g) (e) Form No. 606, "Application to Change a Water Right"; ;~~
- ~~(i) submission of this application must include information required by the following a criteria addendum, addendums, when applicable: See Form Nos. 606A, 606B, 606ASW, or 606T;~~
- ~~(h) Form No. 606A "Supplement to Application to Change a Water Right" (for any change in point of diversion or place of storage and for changes in purpose of use or place of use of less than 4000 acre-feet and 5.5 cfs);~~
- ~~(i) (A) Form No. 606B, "Supplement to Application to Change a Water Right" (for changes in purpose of use or place of use of 4000 or more acre-feet a year and 5.5 cfs or more);~~
- ~~(j) (B) Form No. 606ASW, "Supplement to Application to Change a Water Right" (for salvage water); or~~
- ~~(k) (C) Form No. 606T, "Temporary Change Supplement to Application to Change a Water Right"; ;~~
- ~~(l) (f) Form No. 607, "Application for Extension of Time";~~
- ~~(m) (g) Form No. 608, "Water Right Ownership Update"; ;~~
- ~~(n) (i) Form No. 608A, "Addendum to Water Right Ownership Update Form for Apportioned Water Right"; ;~~
- ~~(o) (h) Form No. 611, "Objection to Application";~~
- ~~(p) Form No. 612 "Notice and Statement of Opinion";~~
- ~~(q) (j) Form No. 613, "Fee Schedule for Water Use in Montana";~~
- ~~(r) (i) Form No. 615, "Water Conversion Table";~~
- ~~(s) (k) Form No. 617, "Project Completion Notice for Permitted Water Development";~~
- ~~(t) (l) Form No. 618, "Project Completion Notice for Change of a Water Right";~~
- ~~(u) (m) Form No. 625, "Water Right Correction";~~
- ~~(v) (n) Form No. 626, "Application to Renew a Temporary Water Right Change";~~
- ~~(w) Form No. 627 "Notice of Exempt Water Right" (exempt from the adjudication filing requirements);~~
- ~~(x) (o) Form No. 630, "Controlled Groundwater Area Petition";~~
- ~~(y) (p) Form No. 631, "Petition for Closure of a Highly Appropriated Basin";~~
- ~~(z) (q) Form No. 634, "Replacement Well Notice" (for municipal wells that do not exceed 450 gpm or for all other wells that do not exceed 35 gpm and ten acre-foot per year); and~~
- ~~(aa) (r) Form No. 635, "Redundant Well Construction Notice" (for redundant wells in a public water supply system as defined by 75-6-102, MCA); ;~~

- (s) Form No. 636, "Interim Permit Request";
- (t) Form No. 637, "Reinstatement Request" (for reinstating a permit or change authorization); and
- (u) Form No. 638, "Water Reservation Application for Instream Flow (for instream flow water reservation applications allowed under the United States of America, Department of Agriculture, Forest Service-Montana Compact, Article VI, section B).

AUTH: 85-2-113, MCA

IMP: 85-2-113, MCA

REASONABLE NECESSITY: The amendments to the forms rule clarify that information addressing the form requirements must be submitted, not just the form itself. The proposed amendments also eliminate forms no longer used by the department and add new forms (636, 637, and 638) to be used for water right processing. Form numbers 636 and 637 are necessary in order for the department to ensure that the department obtains the necessary information from applicants or petitioners that is needed for water right processing. Form number 638 is needed to comply with the United States of America, Department of Agriculture, Forest Service-Montana Compact, 85-20-1401, MCA.

36.12.103 FORM AND SPECIAL FEES (1) A filing fee, if required, shall be paid at the time the permit, change, notice of completion, extension of time request, temporary change renewal, ownership update, exempt water right, or petition application (hereafter singularly or collectively referred to as application) is filed with the department. The department will not process any application without the proper filing fee. Failure to submit the proper filing fee within 30 days after notice shall result in a determination that the application is not correct and complete in good faith, does not show a bona fide intent, and it shall be terminated. ~~An application fee is a one-time filing and processing fee paid at the time of application.~~

(a) For an Application for Beneficial Water Use Permit, Form No. 600, filed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344, MCA, or in an administratively closed basin pursuant to 85-2-319, 85-2-321, or 85-2-322, MCA, or a controlled groundwater area pursuant to 85-2-506 and 85-2-507, MCA, or filed under a compact pursuant Title 85, chapter 20, MCA, for all surface water, or a groundwater appropriation of greater than 35 gallons per minute, there shall be a fee of \$800. ~~\$400, except for a groundwater well application with an appropriation of 35 gpm or less, not to exceed ten acre-feet, filed pursuant to the United States National Park Service-Montana Compact, Article II, section B.2.ii(3)(b) or Article IV, section G.2.b.i.(1), or located within the boundaries of a temporary controlled groundwater area, the fee shall be \$200.~~

(b) For an Application for Beneficial Water Use Permit, Form No. 600, filed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344, MCA, or in an administratively closed basin pursuant to 85-2-319, 85-2-321, or 85-2-322, MCA, or a controlled groundwater area pursuant to 85-2-506 and 85-2-507, MCA, or filed under a compact pursuant Title 85, chapter 20, MCA, for a groundwater appropriation of 35 gallons per minute or less, there shall be a fee of \$200.

(c) For an Application for Beneficial Water Use Permit, Form No. 600, not filed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344, MCA, nor in an administratively closed basin pursuant to 85-2-319, 85-2-321, or 85-2-322, MCA, nor a controlled groundwater area pursuant to 85-2-506 and 85-2-507, MCA, nor filed under a compact pursuant Title 85, chapter 20, MCA, for all surface water, or a groundwater appropriation of greater than 35 gallons per minute there shall be a fee of \$600.

~~(b)~~ (d) For an Interim Permit Request, Form No. 636, there shall be a fee of ~~\$50~~ \$150 in addition to (1)(a), ~~(b)~~, or ~~(c)~~.

~~(e)~~ (e) For a Notice of Completion of Groundwater Development (for groundwater developments with a maximum use of 35 gpm or less, not to exceed ten acre-feet per year), Form No. 602, there shall be a fee of ~~\$50~~ \$125.

~~(d)~~ (f) For an Application for Provisional Permit for Completed Stockwater Pit or Reservoir (maximum capacity of the pit or reservoir must be less than 15 acre-feet), Form No. 605, there shall be a fee of ~~\$50~~ \$125.

~~(e)~~ (g) For an Application to Change a Water Right, Form No. 606, there shall be a fee of ~~\$400~~ \$700, except there shall be a fee of \$200 when:

(i) the change application, Form No. 606, concerns a replacement well, greater than 35 gpm or ten acre-feet, or a municipal well that does not exceed 450 gpm, or replacement reservoir located on ~~in~~ the same source; or

(ii) the change application, Form No. 606, concerns only moving or adding stock tanks to an existing system.

~~(iii) There shall be a fee of \$100.~~

~~(f)~~ (h) For an Application for Extension of Time, Form No. 607, there shall be a fee of ~~\$100~~ \$200.

~~(g)~~ (i) For a Water Right Ownership Update, Form No. 608, there shall be a fee of \$50, plus \$10 for each water right transferred after the first water right, not to exceed a maximum of \$300.

~~(h)~~ (j) For filing an Objection to Application, Form No. 611, there shall be a fee of \$25.

~~(i)~~ (k) For an Application to Renew a Temporary Water Right Change, Form No. 626, there shall be a fee of ~~\$100~~ \$200.

~~(j)~~ For a Notice of Exempt Water Right, Form No. 627, there shall be a fee of ~~\$50~~.

~~(k)~~ (l) For a Controlled Groundwater Area Petition, Form No. 630, there shall be a fee of ~~\$500~~ \$1500 ~~for filing this petition form~~, plus the petitioner shall also pay: ~~reasonable costs of giving notice including the newspaper and individual notice costs, printing and mailing costs, holding the hearing, conducting investigations or studies, and making records pursuant to 85-2-506 and 85-2-507, MCA, except the cost of salaries of the department personnel.~~

(i) photocopy and postage costs for copying and mailing the appointment of the hearing examiner, notice of hearing, and petition to all land owners and water right owners located within the proposed boundaries, and other persons as required by 85-2-506, MCA;

(ii) photocopy and postage costs for copying and mailing the hearing examiner's proposal for decision, final order, and other orders as needed;

(iii) newspaper publication of the notice of hearing and orders as required by statute and the hearing examiner;

(iv) actual rental costs for the hearing location and required sound equipment as determined by the hearing examiner; and

(v) other costs of holding the hearing, conducting investigations or studies, and making records pursuant to 85-2-506 and 85-2-507, MCA, except the cost of salaries of the department personnel.

~~(l) (m) For a Petition for Closure of a Highly Appropriated Basin, Form No. 631, there shall be a fee of \$500 \$1500 for filing this petition form, plus the petitioner shall also pay: reasonable costs of giving notice including the newspaper and individual notice costs, printing and mailing costs, holding the hearing, conducting investigations or studies, and making records pursuant to 85-2-319, MCA, except the cost of salaries of the department personnel.~~

(i) publication costs of the proposed rules in the Montana Administrative Register;

(ii) photocopy and postage costs for copying and mailing the Administrative Rule Proposal Notice and appointment of the hearing examiner to all land owners and water right owners located within the proposed boundaries and other persons as required by 85-2-319, MCA;

(iii) photocopy and postage costs for copying and mailing the Notice of Adoption and other documents as needed;

(iv) newspaper publication of the Notice of Rulemaking Hearing;

(v) actual rental costs for the hearing location and required sound equipment as determined by the hearing examiner; and

(vi) other costs of holding the hearing, conducting investigations or studies, and making records pursuant to 85-2-319, MCA, except the cost of salaries of the department personnel.

~~(m) For reinstating a permit or change authorization, there shall be a fee of \$25.~~

~~(n) For a Replacement Well Notice, Form No. 634, there shall be a fee of \$50 \$100.~~

~~(o) For a Redundant Well Construction Notice, Form No. 635, there shall be a fee of \$50.~~

(p) For a Reinstatement Request, Form No. 637, there shall be a fee of \$200.

(q) For a Water Reservation Application for Instream Flow, Form No. 638, there shall be a fee of \$800, plus the applicant shall also pay:

(i) photocopy and postage costs for copying and mailing the appointment of the hearing examiner and notice of hearing;

(ii) photocopy and postage costs for copying and mailing the hearing examiner's proposal for decision, final order, and other orders as needed;

(iii) newspaper publication of the notice of hearing and orders as required by statute and the hearing examiner;

(iv) actual rental costs for the hearing location and required sound equipment as determined by the hearing examiner; and

(v) other costs of holding the hearing, conducting investigations or studies, and making records pursuant to 85-2-506 and 85-2-507, MCA, except the cost of salaries of the department personnel.

(2) and (3) remain the same.

AUTH: 85-2-113, MCA

IMP: 85-2-113, 85-2-312, MCA

REASONABLE NECESSITY: Pursuant to 85-2-113, MCA, the department may prescribe fees for public service provided under the Montana Water Use Act. The department evaluated water right application processing costs and revenues generated and determined that fee increases are necessary. The proposed fee increases are expected to raise revenues to \$1,007,400 each year and will affect approximately 12,578 people. Some fee language has been changed to clearly denote the fees an applicant or petitioner are required to pay. Finally, the required fees for the new forms were identified.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted in writing to Kim Overcast, Department of Natural Resources and Conservation, 1424 Ninth Avenue, Helena, MT 59620; fax (406) 444-5918; or e-mail kovercast@mt.gov, and must be postmarked no later than January 17, 2008.

5. Kim Overcast, Department of Natural Resources and Conservation, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing on Proposed Amendment is available through the department's website at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed Amendment conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent or delivered to the contact person in (4) above or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton

MARY SEXTON

Director

Natural Resources and Conservation

/s/ Anne Yates

ANNE YATES

Rule Reviewer

Certified to the Secretary of State on December 10, 2007.